

§ 298.3

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substantial compliance with the requirements of 46 U.S.C. Ch. 121 and the regulations prescribed under that Chapter by the United States Coast Guard; and

(iv) Has as the mortgagee—

(A) A State;

(B) The United States Government;

(C) A Federally insured depository institution, unless disapproved by the Secretary for that Vessel;

(D) An individual who is a citizen of the United States;

(E) A Person qualifying as a citizen of the United States pursuant to a provision of 46 App. U.S.C. 802; or

(F) A Person approved by the Secretary pursuant to regulations at 46 CFR 221.23(d); and

(2) In the case of a mortgage on an Eligible Export Vessel, whenever made, a mortgage that—

(i) Constitutes a mortgage that is established as security on an Eligible Export Vessel under the laws of a foreign country;

(ii) Was executed under the laws of that foreign country and under which laws the ownership of the Vessel is documented;

(iii) Is registered under the laws of that foreign country in a public register at the port of registry of the Vessel or at a central office;

(iv) Otherwise satisfies the requirements of 46 U.S.C. 31301(6)(B) to constitute a Preferred Mortgage; and

(v) Has the Secretary as the mortgagee, or such other mortgagee as is permitted by the applicable foreign law and approved by the Secretary.

Related Party means as that term is defined by generally accepted accounting principles outlined in paragraph 24 of Statement of Financial Accounting Standards No. 57, *Related Party Disclosures*.

Secretary means the Secretary of Transportation, acting by and through the Maritime Administrator, Department of Transportation, the Maritime Administrator or any official of the Maritime Administration to whom is duly delegated the authority, from time to time, to perform the functions of the Secretary of Transportation or the Maritime Administrator, Department of Transportation.

Secretary's Note means a promissory note from the Obligor to the Secretary in an amount equal to the aggregate amount of the Obligations, which is issued simultaneously with the Guarantees.

(aa) *Security Agreement* means the primary contract between the Obligor and the Secretary, providing for the transfer to the Secretary by the Obligor of all right, title and interest of the Obligor in certain described property (including rights under contracts in existence or to be entered into), and containing other provisions relating to representations and responsibilities of the Obligor to the Secretary as security for the issuance of Guarantees.

Vessel means all types of vessels, whether in existence or under construction, including passenger, cargo and combination passenger-cargo carrying vessels, tankers, towboats, barges and dredges which are or will be documented under the laws of the United States, floating drydocks which have a capacity of at least thirty-five thousand or more lifting tons and a beam of one hundred and twenty-five feet or more between the wing walls and oceanographic research or instruction or pollution treatment, abatement or control vessels, which are owned by citizens of the United States; except that an Eligible Export Vessel shall not be documented under the laws of the United States.

[61 FR 21314, May 9, 1996, as amended at 62 FR 47152, Sept. 8, 1997]

§ 298.3 Applications.

(a) *Content and amendment.* Each application for a commitment to execute Guarantees shall be made on Form MA 163 to the Secretary, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, and be certified in the manner prescribed on said form. All required information, including copies of any demise charters, time charters in excess of six months, contracts of affreightment, drilling contracts or other contractual arrangements with respect to the Vessel or Vessels, shall be presented on the form or in exhibits and schedules submitted with the application. In addition, the Declaration of Lobbying form as required by 31 U.S.C. 1352 shall be

filed with the initial application, as part of the formal submission. Each exhibit and schedule shall contain a statement, on the first page thereof, clearly identifying the document as an attachment to an application for Obligation Guarantees, stating the name of the applicant and the date of the application. Any amendment of data contained in the application filed shall be marked "Amendment," and shall contain a statement on the first page thereof, clearly identifying the document as an amendment to an application for Obligation Guarantees, stating the name of the applicant and the date of application. The certification required on Form MA 163 shall be affixed to each amendment.

(b)(1) *Time requirements for application.* Each application shall be submitted to the Secretary at least four months prior to the anticipated date by which the applicant requires a Letter Commitment. The Secretary may consider applications with less notice prior to the anticipated date by which the applicant requires a Letter Commitment, upon written documentation that extenuating circumstances exist. During the first 15 calendar day period after submission, the Secretary will perform a preliminary review of the application for adequacy and completeness. If the application is found to be incomplete, or if additional data is required, the Secretary will notify the applicant promptly in writing and the applicant will have 15 calendar days to correct deficiencies from the date of each request for additional information. If the applicant has not corrected the deficiencies, or made substantial progress toward correcting them, within this 15 calendar day period, then the Secretary may terminate the processing of the application without prejudice. Once the Title XI application is considered complete by the Secretary, the Secretary will act on the application within a period of 60 calendar days, unless for good cause the Secretary deems it necessary to extend such period. If an application is not completed by the applicant and acted upon by the Secretary within four months from the submission date, unless such time period is extended by the Secretary, the Secretary will no-

tify the applicant in writing that processing of the application is terminated and that the applicant may reapply at a later date. If an application is terminated by MARAD without prejudice, no new filing fee will be assessed for a subsequent application for a similar project that is filed within one year of the termination date. If a subsequent application is for a substantially different project as determined by MARAD on a case-by-case basis a new filing fee will be assessed.

(2) *Time requirements for documentation.* An applicant to whom a Letter Commitment has been issued shall submit four sets of the documentation to the Secretary for review. The documentation shall be submitted to the Secretary for review at least six weeks prior to the anticipated closing to afford the Secretary time to complete an adequate review of the documentation. The applicant shall utilize the standard form of documentation which will be provided by the Secretary.

(3) *Processing applications.* In processing applications, the Secretary shall consider the different degrees of risk involved with different applications.

(4) *Additional assurances.* For those applications not involving well established firms with strong financial qualifications and strong market shares, seeking financing guarantees for replacement vessels in an established market, in which projected demand exceeds supply, the Secretary may require additional assurances prior to approval, such as firm charter commitments, parent company guarantees, greater equity participation, private financing participation, security interest on other property and similar arrangements.

(c) *Filing Fee.* Each application must be accompanied by a filing fee in the amount of \$5,000, which will be non-refundable, irrespective of whether the Secretary subsequently issues a Letter Commitment.

(d) *Confidential Information.* If the application, including attachments thereto, contains information which the applicant considers to be trade secrets or commercial or financial information and privileged or confidential, or otherwise exempt from disclosure under the Freedom of Information Act (5

U.S.C. 552), the applicant shall assert a claim of exemption at the time of application. The same requirement shall apply to any amendment to the application. If no claim of exemption is made when the application or amendment is filed, the Maritime Administration shall not oppose any request subsequently made for disclosure, pursuant to the Freedom of Information Act (FOIA), of any information contained in the application. The following procedures shall apply with respect to the assertion and review of FOIA exemption claims:

(1) Form and bases for claim. Any claim of exemption shall be made in a memorandum or letter contained in a sealed envelope marked "Confidential Information," addressed to the Secretary, Maritime Administration, and shall be subscribed by the applicant, or with respect to a corporate applicant, by a responsible corporate officer of the applicant. The applicant shall specifically and separately designate each part of the application, including attachments or amendments thereto, to which exemption from disclosure is claimed by noting "Confidential Information" thereon, and shall place each page in the sealed envelope. The applicant shall state in the memorandum or letter the bases, in detail, for each assertion of exemption, including but not limited to statutory and decisional authority.

(2) The Secretary, Maritime Administration, shall make a determination as to any claim of exemption at the time a request is made for the information pursuant to the Freedom of Information Act. If the Secretary, Maritime Administration makes a determination unfavorable to the applicant as to any item of information in the application or amendment, the applicant will be advised that the Maritime Administration will not honor the request for confidentiality at the time of any request for production of information made pursuant to the Freedom of Information Act by third parties.

(e) *Priority.* The Maritime Administration shall give priority for processing applications to vessels capable of serving as a naval and military auxiliary in time of war or national emergency, and requests for financing con-

struction of equipment or vessels less than one year old as opposed to the financing of existing equipment or vessels that are one year old or older. Any applications involving the purchase of vessels currently financed under Title XI will also receive priority consideration for purposes of processing the assumption of the obligations as will applications from those willing to take guarantees for less than the normal term for that class of vessel. In regard to shipyards, priority will be given to applications from General Shipyard Facilities that have engaged in naval Vessel construction and that have pilot projects for shipyard modernization and Vessel construction, with respect only to funds appropriated to the Secretary of Defense, pursuant to provision of section 1359(a) of Pub. L. 103–160, 107 Stat. 1547. With regard to Eligible Export Vessels, the Secretary may not issue a commitment to guarantee Obligations for an Eligible Export Vessel unless the Secretary determines, in the sole discretion of the Secretary, that the issuance of a commitment to guarantee obligations for an Eligible Export Vessel will result in the denial of an economically sound application to issue a commitment to guarantee Obligations for vessels documented under the laws of the United States operating in the domestic or foreign commerce of the United States, after considering:

(1) The status of pending applications for commitments to guarantee obligations for vessels documented under the laws of the United States and operating or to be operated in the domestic or foreign commerce of the United States;

(2) The economic soundness of the applications referred to in paragraph (e)(1) of this section; and

(3) The amount of guarantee authority available.

(Approved by the Office of Management and Budget under control number 2133–0018)

Subpart B—Eligibility

§ 298.10 Citizenship.

(a) *Applicability.* Prior to acquiring a legal or beneficial interest in a Vessel financed under Title XI of the Act